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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13th August, 2018

+ FAO(OS) 87/2018

C S AGARWAL

..... Appellant

Through: Mr.Varun Goswami, Mr.Rahul Sinha
and Mr.Gauransh Gupta, Advs.

versus

M/S RAJDHANI NURSURIES & ORS

... Respondents

Through: None

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR JUSTICE C. HARI SHANKAR

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JUDGMENT (ORAL)

C. HARI SHANKAR, J.

1. This appeal, at the instance of Defendant No. 1 in CS(OS) 76/2010, is directed against order, dated 7th May, 2018, whereby the learned Single Judge has dismissed IA 6216/2018, filed by the appellant/defendant No.1 under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (hereinafter referred to as “the CPC”).

2. Given the limited scope of controversy before us, it is not necessary to allude, in detail, to the dispute forming subject matter of the main suit, i.e. CS(OS) 76/2010. Suffice it to state that, in IA 882/2010, filed by Defendant Nos. 1 and 3 in CS(OS) 76/2010, the

following order was passed by the learned Single Judge on 25th January, 2010:

“I.A.No.882/2010 in CS(OS) No.76/2010

This is an application filed by defendant no.1 and 3 seeking status quo of the properties; details of which have been mentioned in para no.18 of the present application. Learned counsel for the applicants has drawn the attention of the Court to the lease agreement dated 30.11.2006 and the agreement to sell dated 5.2.2007 whereby the defendant no.3 had in pursuance to the aforesaid transactions paid a sum of Rs.11 crores and another sum of Rs.2.80 crores to the defendant no.2. The details of the properties mentioned in para no.18 of the said application are stated to be owned by the defendant no.2.

At this stage counsel for the plaintiff has appeared and he accepts notice on behalf of the plaintiff. It is stated that if a status quo order qua the suit property is passed it should operate against all the parties including defendant nos.1 and 3; this is not opposed by the learned counsel for the applicant.

In view of the averments made in the present application and also the averments as contained in the plaint, a prima facie case is made out in favour of the applicants; balance of convenience also lies in their favour; irreparable loss will be suffered by the applicants in case ex parte injunction is not granted in their favour. Till next date of hearing, status quo of the properties as detailed in para no.18 of the application be maintained.

Compliance of Order 39 Rule 3 CPC be done in one week.

Notice of the application be issued to the other defendants.

Renotify for the date already fixed i.e. 17.3.2010.”

3. Clearly, what was directed, by the aforementioned order dated 25th January, 2010, was maintenance of the “status quo of the properties as detailed in para no.8 of the application”.

4. IA 6216/2018 was filed by Defendant No.1, under Order XXXIX Rule 2A of the CPC alleging violation of the above extracted order dated 25th January, 2010. The provocation for filing the said IA is made clear, in para 1 of the impugned order dated 7th May, 2018, in the following words:

“IA No.6216/2018 (of the defendant no.1 under Order XXXIX Rule 2A CPC)

*1. The senior counsel for the applicant / defendant no.1 states / argues, i) that vide order dated 25th January, 2010 on an application of the defendants no.1 and 3 in this suit, seeking status quo qua the properties, status quo of the properties, as detailed in para no.18 of the application, was directed to be maintained; ii) that the said order continued till 2nd July, 2014 when the plaint was rejected qua the defendants no.4 to 11; (iii) the plaintiff has appealed against the said order but in appeal there is no order of status quo; iv) that **while the order of status quo was in operation, one of the properties mentioned in para no.18 of the application, being agricultural land at district Bhiwadi, was acquired and defendants no.4 and 9, against whom this application is directed, received compensation for such acquisition and also applied for enhancement of compensation; and, (v) that before acquisition defendants No.4 and 9 had also applied for conversion of use of the said land from agricultural to some other and of which the applicant / defendant no.1 is not aware.**”*

5. Holding that receipt of compensation, against acquisition of one of the properties, even if it was included in para 18 of IA 882/2010, could not be regarded as disturbance of the said status quo granted by this Court, on 25th January, 2010, in respect of the said property, the learned Single Judge dismissed IA 6216/2018 by the impugned order dated 7th May, 2018. Paras 4 to 6 of the impugned order encapsulate the view of the learned Single Judge, and are, therefore, reproduced thus:

“4. Compensation for the property, in my opinion, cannot be equated to the property qua which the order of status quo to be made. Rather, it has also been enquired from the senior counsel for the applicant / defendant no.1 as to why the applicant / defendant no.1 could not have made a claim under the Land Acquisition Act, 1894 for compensation or disputed the claim of the defendants no.4 and 9 for compensation.

5. The senior counsel for the applicant / defendant no.1 states that the applicant / defendant no.1 could not have done so as the suit is for recovery of monies and status quo was directed to be maintained to secure the claim of the defendant No.1/applicant.

6. I may mention that the claim of money in the suit, is of the plaintiff and not of the applicant / defendant no.1.”

6. We are of the view that the present appeal, directed against the order dated 7th May, 2018, is thoroughly misconceived. There can be no manner of doubt that receipt of compensation, by Defendant Nos. 4 and 9 against acquisition of land, or even application, by the said defendants, for enhancement thereof, could never be regarded as disturbance, at the instance of the said defendants, of the status quo,

directed to be maintained in respect of the said land. Acquisition of the land was a governmental and a ministerial act, effected by the authorities statutorily empowered to effect such acquisition. Defendant Nos. 4 and 9 are neither directly, nor indirectly, responsible for such acquisition. Award of compensation/solatium, against acquisition of land, is a statutory dispensation, and receipt of the said amount, by the owner of the acquired land an inevitable sequitur to the acquisition itself. The act of the Defendant Nos. 4 and 9 in receiving such compensation, or even in applying for enhancement thereof, cannot be said, by any stretch of imagination, to violate the status quo directed by the learned Single Judge on 25th January, 2010.

7. We may reproduce, for ready reference, Order XXXIX Rule 2A of the CPC:

“2A. Consequence of disobedience or breach of injunction.-

*(1) In the case of **disobedience of any injunction granted** or other order made under rule 1 of rule 2 or **breach of any of the terms on which the injunction was granted** or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person **guilty of such disobedience or breach** to be attached, any may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.*

(2) No attachment made under this rule shall remain in force for more than once year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to

the injured party and shall pay the balance, if any, to the party entitled thereto.”

8. Clearly, Order XXXIX Rule 2A applies in the case of breach of an injunction granted by the Court. Defendant Nos. 4 and 9 cannot be said, in any manner, to have breached the injunction granted by the learned Single Judge on 25th January, 2010, merely by receiving compensation, against acquisition of land by the Government, or applying for enhancement thereof, even if the land was subject matter of the said order of injunction.

9. Resultantly, the present appeal, being misconceived *ab initio*, and totally devoid of merit, is dismissed as such. There shall be no order as to costs.

C. HARI SHANKAR, J.

CHIEF JUSTICE

AUGUST 13, 2018

rk/bhp